

ADVISORY OPINION 1994-010

Any advisory opinion rendered by the Registry under subsections (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

September 20, 1994

Texas Gas Transmission Corporation
C/o Mr. Nicholas W. Hetman
P.O. Box 1160
3800 Frederica Street
Owensboro, Kentucky 42302

Dear Mr. Hetman:

Thank you for contacting the Registry. Based upon the information you have provided to the Registry in your letter and on the telephone, the facts applicable to your request may be stated as follows:

Texas Gas Transmission Corporation (hereinafter "Texas Gas"), is an out-of-state federally registered PAC, which makes contributions to Kentucky candidates. Texas Gas also has an office in Kentucky. Previously, the Texas Gas PAC had been registered in Kentucky. With the passage of the new election laws, the Kentucky Registry of Election Finance (hereinafter "KREF") informed the Texas Gas PAC that it could terminate its state registration. Acting on that confirmation, Texas Gas PAC terminated state registration. Later, the KREF stated that even though Texas Gas PAC was a federally registered out-of-state PAC, it must re-register in Kentucky.

Texas Gas claims that it is a federal PAC and, thus, out-of-state due to its federal status. Therefore, it is currently in compliance with KRS 121.170(6).

Based on the information provided, your questions may be stated as follows:

1) Whether an out-of state federally registered PAC with an office in Kentucky must register as an in-state PAC, and thus, comply with Kentucky election laws.

KRS 121.170(6)(b) provides that:

Any federally registered out-of state permanent committee that contributes to a Kentucky candidate shall file with the registry a copy of the Federal Election Commission (hereinafter "FEC") finance report when a contribution is made to a Kentucky candidate.

KRS 121.170(6)(c) requires that:

Federally registered out-of-state permanent committees also comply with Kentucky laws concerning contributions to Kentucky candidates.

The foregoing statutes do not specifically address reporting requirements for federally registered PACs which are located in Kentucky.

Based upon the following reasons, the Registry finds that the exemption contained in KRS 121.170(6) is not applicable to federal PACs located in Kentucky which make contributions to state candidates.

First, choice-of-law principles hold that the effect of any act must be determined by the law of the place where such an act took place. CJS, Conflict of Laws, Section 8(1). If one submits to the benefits of a jurisdiction, one also consents to the laws of that jurisdiction. Texas Gas, by maintaining an office in Kentucky, has consented to Kentucky's jurisdiction and its statutes.

Second, the Texas Gas PAC office in Kentucky could be classified as an agent for its principal PAC office in Texas. The scope of an agency's authority is ordinarily governed by the law of the place where the agent acts on his or her principal's behalf. Again, this gives Kentucky jurisdiction over the Texas Gas PAC office in the state with respect to state campaign laws. Most importantly, the FEC has ruled that any federal PAC contribution or expenditure made in connection with a nonfederal election is subject to applicable state law (citation omitted).

Third, under KRS 271B.16-220, foreign corporations are required to register with Kentucky when conducting corporate activity in the state. By analogy, a federally registered out-of-state PAC with an office in Kentucky, which also conducts political activity in the state, should be subject to the state's registration requirements.

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Fourth, to interpret this statute otherwise would allow in-state PACs, which are federally registered, to avoid the reporting requirements of KRS 121.180. For example, the FEC requires that any amount above \$200 be reported. In turn, when the FEC report is sent to Kentucky, that form will not show any itemized contributions under \$200. If this is the case, a federally registered PAC would not have to show contributions made to a Kentucky candidate in an amount less than \$200, resulting in violation of Kentucky reporting laws.

- 2) Whether a federally registered out-of-state PAC must pay Kentucky administrative and expenditure fees for all expenditures, which includes expenditures to non-Kentucky candidates.

Texas Gas PAC agrees that the five percent (5%) fee required by KRS 121.180(6)(b) is payable on contributions made to Kentucky candidates. However, Texas Gas PAC claims it should not have to pay a fee based on expenditures that have no connection with Kentucky.

In response to this question, a 1994 amendment to KRS 121.180(6)(b) requires administrative fees to be assessed on contributions rather than expenditures. Therefore, the five percent (5%) fee will be payable only on Texas Gas PAC's contributions to Kentucky candidates.

If you have any more questions, please give us a call. Thank you.

Sincerely,

Rosemary F. Center
General Counsel

RC/db